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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/758,632	01/10/2001	Yoshiki Nishitani	39303.20222.00	9558

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EXAMINER

FLETCHER, MARLON T

ART UNIT	PAPER NUMBER
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2837

DATE MAILED: 05/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/758,632

Applicant(s)

NISHITANI ET AL.

Examiner

Marlon T Fletcher

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-192 is/are pending in the application.
- 4a) Of the above claim(s) 22-32, 72-165, 167, 170-176, 178 and 181-192 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21, 33-61, 63-71, 166, 168, 169, 177, 179 and 180 is/are rejected.
- 7) ☐ Claim(s) 62 and 64 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-19, 33-46, 49-58, 65-67, 70, 71, 166, 168, 169, 177, 179, and 180, are rejected under 35 U.S.C. 102(b) as being anticipated by Hiyoshi et al. (5,290,964).

As recited in claims 1, 33, 51, 165, 168, 169, 177, 179, and 180, Hiyoshi et al. disclose a control system comprising: a receiver (203a, 203b) adapted to receive detection data transmitted from a motion detector (202a, 202b) provided for movement with a performer, the detection data representing a state of a motion of the performer detected via a sensor that is included in said motion detector moving with the performer (column 14, lines 5-39); a performance apparatus (201) adapted to carry out a performance of a tone, on the basis of performance data; an analyzer coupled with said receiver and adapted to analyze the motion of the performer on the basis of the detection data and thereby generate a plurality of analyzed data (column 11, lines 32-64 and column 16, line 26 through column 17, line 8); and a controller (130, 224) coupled with said performance apparatus and said analyzer and adapted to control the performance of a tone by said performance apparatus in accordance with the plurality of analyzed data generated by said analyzer.

As recited in claims 2, 34, and 52, Hiyoshi et al. disclose the control system, wherein said controller controls a tone volume of the tone to be performed by said performance apparatus, in accordance with the plurality of analyzed data generated by said analyzer (column 18, lines 61-68 and column 20, lines 53-61).

As recited in claims 3, 35, and 53, Hiyoshi et al. disclose a control system, wherein said controller controls a tempo of the tone to be performed by said performance apparatus, in accordance with the analyzed data (column 28, lines 18-24 and column 33, lines 15-26).

As recited in claims 4, 36, and 54, Hiyoshi et al. disclose the control system, wherein said controller controls performance timing of the tone to be performed by said performance apparatus, in accordance with the analyzed data (column 28, lines 45-48).

As recited in claims 5, 37, and 55, Hiyoshi et al. disclose the control system, wherein said controller controls a tone color of the tone to be performed by said performance apparatus in accordance with the plurality of analyzed data (column 10, lines 20-28 and column 13, lines 49-55).

As recited in claims 6, 38, and 56 Hiyoshi et al. disclose the control system, wherein said controller controls an effect of the tone to be performed by said performance apparatus, in accordance with the plurality of analyzed data (column 28, lines 44-60).

As recited in claims 7, 39, 57, and 65, Hiyoshi et al. disclose the control system, wherein said controller controls a tone pitch of the tone to be performed by said performance apparatus, in accordance with the plurality of analyzed data (column 10, lines 1-19).

As recited in claims 8, and 50, Hiyoshi et al. disclose the control system, wherein the sensor included in said motion detector is an acceleration sensor, and the detection data is data indicative of acceleration of the motion detected via the acceleration sensor (column 10, lines 45-51).

As recited in claims 9-14 and 50, Hiyoshi et al. disclose the control system, wherein the plurality of analyzed data generated by said analyzer include at least peak point data indicative of an occurrence time of a local peak, indicative of a height, indicative of acuteness, indicative of a depth, indicative of a time interval between local peaks, and include at least high-frequency-component intensity data indicative of intensity, in a time-varying waveform of absolute acceleration of the motion

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(column 11, lines 32-64; column 12, lines 25-48; column 14, line 5 through column 15, line 10; and figures 2, 4, 18, 19 , and 21).

As recited in claims 15, 43, and 70, Hiyoshi et al. disclose the control system, wherein said motion detector is held by a hand of the performer (figures 9, 33, and 34).

As recited in claims 16, 44, and 71, Hiyoshi et al. disclose the control system, wherein said motion detector is attached to a body of the performer (figures 7 and 8).

As recited in claims 17, 40, and 58, Hiyoshi et al. disclose the control system, wherein the performance data is automatic performance data, and said performance apparatus generates a tone on the basis of the automatic performance data (column 28, lines 18-23).

As recited in claims 18, 45, 49, and 66, Hiyoshi et al. disclose the control system, which further comprises a transmitter adapted to transmit, to said motion detector, guide data for providing a guide or assistance as to a motion to be made by the performer (column 14, lines 5-21) which further comprises a receiver adapted to receive guide data for providing a guide or assistance (CPU) as to a motion to be made by the performer (column 8, lines 34-42 and column 13, lines 23-48).

As recited in claims 19, 46, and 67, Hiyoshi et al. disclose the control system, wherein said performer is a human being (figures 7 and 8).

As recited in claims 41, and 42, Hiyoshi et al. disclose the motion detector, wherein said sensor detects acceleration of the motion in directions of two or three axes as said plurality of states (column 21, lines 17-23).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 20, 21, 47, 48, 59-61, 68, 69, are rejected under 35 U.S.C. 103(a) as being unpatentable over Hiyoshi et al.

Hiyoshi et al. do not disclose the use of the motion detecting system on an animal or robot nor LEDs.

However, because they provide motion, it would have been obvious to one skilled in the art at the time of the invention, to use the system with anything that provides motion. Official Notice is taken with respect to it being well known in the art to use LEDs with transmitters. Official Notice further taken with respect to it being well known in the art to provide automatic performance in parts.

Allowable Subject Matter

5. Claims 62 and 64 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. The following is a statement of reasons for the indication of allowable subject matter: The prior art provides motion detectors in correspondence with display devices. However, the prior art fails to show the correspondence as a reflection of automatic performance data, wherein the performance data is in parts. For this reason, the above is indicated as allowable.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following references are related to motion detection of a performance, wherein some of the references provide displays in conjunction with the system. The references are as follows:

Usa (5,585,584)

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Suzuki et al. (5,192,823)

Suzuki et al. (5,177,311)

Suzuki et al. (5,170,002)

Suzuki et al. (5,151,553)

Suzuki et al. (5,127,301)

Suzuki et al. (5,105,708)

Suzuki et al. (5,005,460)

Suzuki et al. (4,998,457)

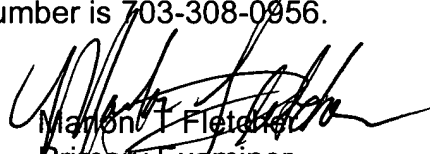
Suzuki et al. (4,977,811)

Suzuki et al. (4,905,560)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marlon T Fletcher whose telephone number is 703-308-0848. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Nappi can be reached on 703-308-3370. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7722 for regular communications and 703-308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.


Marlon T. Fletcher
Primary Examiner
Art Unit 2837

MTF
May 19, 2003